GOVERNMENT OF KARNATAKA

Social Welfare and Labour Department

Labour Dispute.—Industrial Dispute between the workmen and the management of Karopady Agricultural Co-operative Bank Ltd., Karopady, Bantwal, South Kanara.

Award of the Presiding Officer, Labour Court, Mangalore, published.

Read the following Papers :

(1) Letter No. A/ID. 14/74-75, dated 17th March 1975 from Shri H. S. Venkatasubbaiah, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

Dated 17th March 1975.

Reference (ID) (LCM) No. 14 of 1973.

Present :

Sri H. S. Venkatasubbaiah, B.A., LL.B., Presiding Officer.

Between :

Sri Gopalakrishna Bhat, C/o. Sahakari Naukarara Sangh, Felix Pai Bazar, Mangalore-1. .. I Party

And

The Management of Karopady Agricultural Co-operative Bank Ltd., Karopady, Bantwal, South Kanara. II Party

AWARD

The Government of Karnataka, being of the opinion that an industrial dispute exists between the workmen and the management of Karopady Agricultural Co-operative Bank Ltd., Karopady, Bantwal, South Kanara, have referred the said dispute for adjudication to this Labour Court under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. FCL 1231 LLD 72, dated 6th February 1973. The Points of dispute referred for adjudication are as follows :—

"(1) Are the Management of Karopady Co-operative Agricultural Bank Ltd., Karopady, P.O. Bantwal Taluk South Kanara District, justified in terminating the services of Sri P. Gopalakrishna Bhat from 23rd February 1972 ?

(2) If not, to what relief is the said workman entitled ?"

2. After the receipt of the reference, notices were issued to both the parties to file their respective statements. The first party filed its claim statement on 15th March 1973 and the second party its counter statement from 31st March 1973. The claim of the first party in short is that he was an employee of the second party appointed as a temporary clerk as per Resolution No. 796/21st November 1969 of the Board of directors of the Bank. Accordingly, the first party had paid the security deposit of Rs. 250 on 1st December 1969 and joined the services of the second party. Thereafter about two months, the first party was deputed to undergo the training in Co-operation. After completing the training the first party approached the second party for appointment. After lapse of nearly one year, the first party was appointed as clerk on 4th October 1971 awaiting the approval of the Assistant Registrar of Co-operative Societies as per the proceedings of the Board dated 23rd October 1971. Accordingly the first party's pay as a clerk was fixed at Rs. 100 per month. Further on

9th December 1971, in an agenda of the 10th Board meeting of the second party it was to consider the post of the first party. A section of the Board of Directors wanted the first party as a salesman. This was being done with a view to favour some other person. Thereafter, the first party protested against the above action of the second party. But, by a majority of Board of Directors passed a resolution to the effect that the first party should take charge of the salesman from 22nd February 1972. At the same time, the Board of directors decided to relieve a Salesman who has been working under the second party for four years. The first party requested the management for extension of time to take charge of the Salesman. The second party rejected the time and thereafter the first party's services were terminated with effect from 23rd February 1972. As the first party was illegally forced to take charge of the Salesman, the first party intended to bring this injustice to the knowledge of the officers of the Co-operative Department and for this purpose only this party had sought the extension of time. It is further contended that the said action of the management is not only unjust but also illegal and in violation of the principles of natural justice. The second party has not given an opportunity to the first party. Thereafter the second party appointed another person who is untrained in this field as a clerk. It is stated that the action of the second party is high handed, illegal and opposed to law and the second party has no right to terminate the service of first party. It is further stated that by a letter dated 2nd May 1972 the Deputy Registrar of Co-operative Societies, Mangalore, South Kanara had intimated the second party that the termination of service of the first party is illegal and as such the concerned officer will hold an enquiry and no enquiry report has been reported. Hence it was prayed that the termination order of the first party be set aside and he be reinstated in his original post with continuity of service and back wages.

3. The contentions raised by the second party in its counter statement are that the second party was registered

under the Co-operative Societies Act. That the Cadre strength of the Bank is fixed by the Registrar and if the Bank has to employ any person in excess of the Cadre strength so fixed, the approval of the Assistant Registrar of Co-operative Societies Puttur is necessary. Sri P. Gopalakrishna Bhat was appointed purely as a temporary clerk on 1st December 1969 and his appointment was not approved by the Assistant Registrar of Co-operative Societies, Puttur. The said first party desired to undergo co-operative training to qualify himself for posts in any Co-operative Society and this is possible only if he is employed in any co-operative institution to qualify himself for training. Therefore he requested the management to employ him as an apprentice clerk. The management complied with his request. The said first party desired to be relieved from the post for co-operative training as per his letter dated 26th February 1970. On 1st October 1970, he made an application to the second party to employ him in the bank since he completed the training. His application was considered by the Board and as he stood surity contrary to the service rules and also as he was overaged, it was resolved to obtain the sanction of the Assistant Registrar of Co-operative Societies. However in anticipation of the sanction of the Assistant Registrar of Co-operative Societies the first party was appointed on 4th October 1971 as a salesman in the second party establishment and the President was authorised to ascertain the opinion of the Assistant Registrar of Co-operative Societies, Puttur. The said Assistant Registrar, Puttur in his letter No. E/CAB/MSC/149/70-71, dated 14th February 1972 directed the second party to employ the first party as a salesman in the Bank. In consequence of which the second party resolved and requested the said first party to take charge of the post of the salesman on or before 3 p.m. on 22nd February 1972 by letter No. 304, dated 21st February 1972 and the said order was served on him on 21st February 1972 at 7 p.m. He was specifically informed that if he failed to take charge as aforesaid and report, his services would be terminated. That since

he did not take charge of the post, inspite of the said letter, his services were terminated and he was considered as no more in service of the second party. It is contended that it is for the employee to obey the orders of the Board and not to find fault or question the propriety whether it was passed by majority or not. It is denied that the resolution was passed to favour any person. It is not admitted that the first party requested time and the action of the management was just, proper valid and bonafide. Lastly it was prayed that the demand of the first party be rejected with costs.

4. No additional issues were found to be necessary in this case and the points of dispute contained in the order of reference were adopted as issues in this case. Three witnesses were examined on behalf of the first party as WW 1 to WW 3 and exhibits W-1 to W-23 were got marked by the first party. On behalf of the second party the evidence of one witness MW 1 examined in Ref. (ID) (LCM) No. 1/73 was agreed to be the evidence also in this case and it was ordered accordingly (**vide** order sheet, dated 30th August 1974). Exhibits M-1 and M-2 were got marked in this case for the second party.

5. It is not disputed that Sri P. Gopalakrishna Bhat, the first party workman was aged about 32 years when he was appointed as a temporary clerk on 1st December 1969. It is also not disputed that at his request he was deputed for Co-operative training at Coorg and he passed his Co-operative training in first class. He was again taken as a temporary clerk from 4th October 1971 subject to the approval of the Assistant Registrar. It is also not disputed that in December 1971 the Board of Directors of the II Party Society took a decision and directed the first party to work as a Salesman in Kanyana Branch. It is also not disputed that the first party was agitating for payment of salary in accordance with the scale approved as he was being paid only Rs. 100 per month and he was also asking for payment of salary during the period when he was sent

for training. (Exhibit W-11). The first party workman was given a notice on 18th December 1971 by the second party asking him to work as a Salesman and the first party workman requested the second party to continue him as a clerk by his letter dated 23rd December 1971 Ex. W-14. On 3rd January 1972 the first party workman and another were asked to be in charge of sales section till the expiry of leave taken by the Salesmanager Sri Narayana Bhat who had taken leave from 1st January 1972 for one month. But inspite of that the first party did not take up the work as salesman and he did not do so inspite of issue of notice. As per Ex. W-18, dated 21st February 1972 the second party ordered the first party workman to take up the charge of Salesman by 22nd February 1972. He was also warned that his services would be terminated if he did not obey the orders. As the first party did not take up salesman's charge on 22nd February 1972 the second party terminated his services.

6. It is not disputed the second party Bank which is a Co-operative Society is governed by the Karnataka Co-operative Societies Act and Rules. It is also not disputed that under Rule 18 of the Mysore Co-operative Societies Rules, 1960 the age limit for entry into service of a Co-operative Society is 30 years and except with the previous permission in writing of the Registrar, no person, whose age exceeds thirty years shall be appointed to any post in the service of a co-operative society. Of course, there is a proviso to the effect that where any post has to be filled by a person of high qualifications and special experience the age restriction may be relaxed with the previous approval of the Registrar. In his case it is admitted that the first party workmen was aged at least 32 years at the time when he was appointed as a clerk in the second party society. It is also admitted that no previous permission in writing of the Registrar was obtained before he was appointed. So under the Rules of the Co-operative Society the appointment of the first party workman was initially irregular and against rules. Section 1965 II L.L.J.

page 315 (Newspaper Publishers (Private) Ltd., Mangalore-vs-Their Workman by S. K. Press Workers Union, and another. It is also admitted that no subsequent sanction of the Registrar has been obtained for his appointment either by the Society or by the first party workman. In thea bove circumstances it cannot be held that the first party workman was an employee of the second party in the legal sense and therefore he cannot be called a workman and therefore in my opinion the reference itself is not maintainable and the first party cannot get any relief in this reference.

7. It was urged by Sri Ghate, the learned representative for the first party that as the second party had appointed him they were estopped from saying that the appointment of first party workman was irregular or invalid as per rules. In my opinion his argument has no force as there is no estoppal against law or rules framed in accordance with law. Nodoubt it is stated in the Written statement of the second party that in anticipation of the sanction of the Assistant Registrar of Co-operative Societies, the first party workman was appointed on 4th October 1971 as salesman in the second party establishment and the President was authorised to ascertain the opinion of the Asst. Registrar of Co-operative Societies, Puttur and the Asst. Registar, directed the second party to employ the said Sri Gopalakrishna Bhat as saleman in the Bank. Even taking for granted that the second party had appointed him as a sanction or as a clerk in anticipation of the sanction of the Assistant Registrar, even then in my opinion, the appointment of first party workman was irregular. Under Rule 18 of the Co-operative Societies Rules, 1960 the previous permission should be taken in writing of the Registrar before appointing any person whose age exceeded thirty years. Therefore, even granting for the sake of arguments that the Assistant Registrar, had given his approval for the appointment of the first party, even then it is not in accordance with the Rules. So far all the reasons stated above. I am of opinion that the

first party workman cannot maintain this reference and no relief can be given to him in this reference as he was over aged when he was appointed by the second party. It is true that the second party had not taken a plea specifically that the appointment of first party was not in accordance with law andt herefore, the reference was bad in law but it is not disputed that the first party workman was aged more than 30 years as when he was initially appointed under the second party. As that fact is not indispute I am of opinion that the second party is not precluded from raising that question of law even though it had not taken that point specifically in its written statement.

8. Even on the merits of the case, the first party workman di not obey the orders of the management as he did not taken charge of salesman's post as directed by the second party and in spite of issue of a notice dated 21st February 1972 Ex. W-18 by which notice he was intimated that his services would be terminated if he did not take charge. It is admitted that he did not take charge of salesman's post inspite of notice and that therefore his services were terminated by the second party. In the above circumstances it cannot be held that the action of the second party in terminating the services of the first party workman was **mala fide.** Hence on merits also the first party workman has no case. Therefore his prayer for reinstatement to his original post of a clerk with continuity of service and full back wages etc., cannot be granted in this reference.

9. In the result, I pass an award holding that the second party management is justified in terminating the services of Sri P. Gopalakrishna Bhat from 23rd February

1972 and that the said Sri P. Gopalkrishna Bhat is not entitled to any relief in this reference. In the circumstances of the case the parties are directed to bear their own costs.

Mangalore,
Dated: 17th March 1975.

H. S. VENKATASUBBAIAH,
Presiding Officer,
Labour Court, Mangalore.

Order No. SWL 79 LLA 75,

Bangalore, dated the 2nd April 1975

S. O. 1149.—

Whereas by State Government Order No. FCL 1231 LLD 72, dated 6th February 1973, the Industrial Dispute between the workmen and the management of Karopady Agricultural Co-operative Bank Ltd., Karopady, Bantwal, South Kanara, was referred to the Labour Court, Mangalore, for adjudication.

And, Whereas the Labour Court, Mangalore, has submitted to the State Government its award in respect of the said Industrial Dispute.

Now, Therefore, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the **Karnataka Gazette.**

By Order and in the name of the Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.